BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2012-289-W - ORDER NO. 2012-627

OCTOBER 16, 2012

IN RE: Petition of Cliff Ridge Colony Homeowners
Association, Incorporated for Exemption
from Regulation 103-702.7

ORDER APPROVING
HOMEOWNERS
ASSOCIATION
EXEMPTION AND
PARTIAL WAIVER OF

) REGULATION

This matter comes before the Public Service Commission of South Carolina ("the Commission") on the request of the Cliff Ridge Colony Homeowners Association, Inc. ("Cliff Ridge" or "the Association") for approval of the homeowner's exemption to operate as a water system outside the jurisdiction of the Commission, and for a partial waiver of the relevant regulation.

Regulation 103-702.7 defines a "homeowners association" as an association of lot owners located in a particular subdivision or development incorporated under the laws of this state as a non-profit corporation, including as one if its purposes, the operation of a water system to serve the particular subdivision or development. A homeowners association may be found not to be a utility, which would remove the association from Commission jurisdiction if homeowners association status was granted.

Regulation 103-702.7 also sets out various required filings that must be submitted to this Commission before homeowners association status may be granted. The association must file (a) a certified copy of its certificate of incorporation; (b) a copy of

the corporation's bylaws; (c) a copy of any declaration of covenants, conditions and restrictions on real property in the subdivision or development filed in conjunction with the formation of the homeowners association; (d) a copy of the permit or authorization from the Department of Health and Environmental Control issued to the homeowners association to operate the utility; and (e) copies of a statement signed by each lot owner disclosing that the water services in the subdivision are provided by a non-profit homeowners association, in which each lot owner is a voting member, and that an appropriate assessment to meet operating expenses of the utility must be paid by each lot owner.

We would note that Cliff Ridge has submitted all required documents cited by the regulation except for (e) copies of a statement signed by each lot owner. Cliff Ridge is a second home community of 284 lots. Currently all lot owners pay the operating costs for a purification and distribution water system in annual assessments. The Association has determined that a fee-for-consumption basis for recovering the operating costs of the water system is now appropriate. Only 87 lots have occupied residences that draw water from the system and would be charged for water based on consumption. Although we were originally under the belief that the homeowners association had signatures on statements required by (e) for all developed lot owners, and partially on that basis, granted the waiver and homeowners association status, we have since discovered that copies of the required statements have been obtained from 79 of the developed lot owners, but not all lot owners.

After our original ruling, we received several letters from various developed lot

owners who noted that their signatures had not been obtained prior to the Commission's original ruling, and that this Commission should not have granted homeowners association status. We considered these letters collectively as a Motion to Amend our original decision in this case. This Commission also received a letter from the attorney for the homeowners association, stating that he had not intended to state or imply in his original submission that the signatures of all developed lot owners had been obtained. He then proceeded to continue obtaining signatures of developed lot owners until 79 were collected and forwarded to the Commission.

Under this scenario, the Association requests that we affirm our original partial waiver of the regulation, and requests that we accept signed statements only from those lot owners who would be charged for water based on consumption and whose signatures could be obtained, rather than signatures of all lot owners. The Association also requests that we affirm our finding of homeowners association status. Under the circumstances, we believe that these are reasonable requests. We deny the Motion to Amend. We affirm our granting of the partial waiver, based on the fact that the bulk of the signatures were collected from developed lot owners, who are the users of the service. We find that the waiver is appropriate in this scenario and that the waiver is not contrary to the public interest. See 26 S.C. Code Ann. Regs. 103-701(3) Supp. 2011.

This Commission has again examined the remainder of the required documents, and we have found them to be in order and consistent with the requirements of the pertinent regulation. We also note inclusion of the Office of Regulatory Staff's Homeowners Association Exemption Checklist. We therefore affirm our original

declaration of the requested homeowners association exemption to Cliff Ridge. Accordingly, Cliff Ridge Colony Homeowners Association, Incorporated is hereby declared to be a homeowners association under 26 S.C. Code Ann. Regs. 103-702.7 (Supp. 2011), and is also declared to not be a utility. Cliff Ridge Colony Homeowners Association, Inc. shall not be under the jurisdiction of this Commission.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

David A. Wright, Chairman

ATTEST:

Randy Mitchell, Vice Chairman

(SEAL)